

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Xcel Energy Services, Inc.

Docket Nos. ER06-301-000
ER06-301-001

ORDER ACCEPTING AND SUSPENDING PROPOSED SERVICE SCHEDULES
AND ESTABLISHING TECHNICAL CONFERENCE

(Issued May 5, 2006)

1. On December 8, 2005, Xcel Energy Services, Inc. (XES), on behalf of itself and the Xcel Energy Operating Companies,¹ filed proposed Service Schedule H (Transfer of Non-System Sales and Purchases to Facilitate Non-System Marketing) and Service Schedule I (Transfer of Capacity and Energy Purchased from Third Parties) to its Joint Operating Agreement (JOA). XES requests effective dates of January 1, 2001 and April 1, 2005 for Service Schedules H and I, respectively. This order accepts and suspends XES' proposed service schedules, makes them effective the earlier of February 7, 2006, or the date the Commission specifies in an order issued after the technical conference established below, subject to refund. We also direct Staff to convene a technical conference, with the participation of all interested parties, to discuss

¹ The Xcel Energy Operating Companies (Xcel) are the four primary utility operating company subsidiaries of XES. Xcel states that it operates an "integrated public utility system" within the meaning of section 2(a)(29) of the Public Utility Holding Company Act of 1935. 15 U.S.C. § 79b(a)(29) (2000) (subsequently repealed). XES is the service company subsidiary of Xcel, which provide an array of administrative and general services in support of both XES and Xcel. The four subsidiaries at issue are Northern States Power Company (Minnesota) (NSP-M), Northern States Power Company (Wisconsin) (NSP-W) (NSP-M and NSP-W, collectively NSP) Public Service Company of Colorado (PSCo), and Southwestern Public Service Company (SPS). Xcel Energy Inc., is the registered holding company of Xcel and is headquartered in Minnesota. Xcel Energy Inc., has electric operations principally in Minnesota, Wisconsin, Texas, and Colorado.

the issues raised in this filing. The Commission's acceptance of the proposed service schedules is also subject to further orders of the Commission following the technical conference.

I. Background

2. On November 28, 2005, the Commission's Office of Market Oversight and Investigations (OMOI) completed an audit of one of Xcel Energy Inc.'s operating companies, PSCo.² The Public Audit Report revealed that, among other things, PSCo engaged in transactions involving sales of power with its sister operating companies that were made without prior Commission approval, as required by section 205 of the Federal Power Act.³ In the Public Audit Report, OMOI reviewed a number of power sales transactions engaged in by PSCo merchant during the audit period, using transactions data provided by the company, and from an Electric Quarterly Report filing made by the company. OMOI noted that some sales made by PSCo were for delivery in the Eastern Interconnect, even though PSCo did not have customers or assets in the Eastern Interconnect.⁴ OMOI further explains that among the counterparties was NSP, one of PSCo's sister operating companies. In addition, PSCo and SPS, another Xcel operating company, were making similar sales, *i.e.*, sales at delivery points distant from the location of their generating assets and native loads.

3. OMOI found that there was no evidence that the unsanctioned inter-affiliate transactions negatively affected PSCo's customers, other Xcel customers, or customers of non-affiliated suppliers. However, OMOI reviewed PSCo's authority to make such sales under its market-based rate authority⁵ and under its JOA,⁶ and concluded that no such authority existed. OMOI determined that the JOA provides for an operating company to sell to another affiliated operating company from its generating resources. OMOI also

² See November 28, 2005 letter issued in Docket No. PA05-1-000 by Susan Court, Director, OMOI and attached Audit of Standards of Conduct, and Open Access Transmission Tariff (Public Audit Report) for the period of January 1, 2002 through August 31, 2004.

³ 16 U.S.C. § 824d (2000).

⁴ For example, in one series of trades, a trader had sold energy into the bilateral market at PJM West under PSCo's name. To cover this position, the traders sought to buy from PJM directly, which it believed would be the cheapest source of power. However, PSCo did not have a credit arrangement with PJM. The traders structured the deal as NSP purchasing from PJM and selling to PSCo because NSP did have a credit arrangement with PJM.

⁵ See 86 FERC ¶ 61,307 (1999).

⁶ See 90 FERC ¶ 61,020 (2000).

determined that none of the transactions reviewed by OMOI involved the sale of energy from an operating company's generating resources or to an operating company's native load. To correct the concern, OMOI recommended that PSCo make filings with the Commission at the earliest possible time after issuance of the Public Audit Report so that the company is in conformance with section 205 of the FPA and the Commission's implementing regulations, public utilities must file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service.⁷

II. Description of Filing

4. In attempting to address OMOI concerns, XES filed on December 8, 2005, amendments to its JOA that propose new Service Schedules H and I.⁸ Schedule H provides for the transfer of Non-System Sale and Purchase positions held by one operating utility (Transferor) to another operating utility (Transferee) to enable the Transferee to undertake a Non-System Purchase or Sale. The transfer may be for an entire contract position or a portion of a contract position. XES states that the purpose of these transfers is to enable Xcel to maximize revenues from Non-System Marketing to be allocated among Xcel in accordance with Service Schedule C.⁹ Service under this schedule may not be used to evade any restriction on market-based rate authority that may apply to any Operating Company. The transfer price under Schedule H is determined at the time of the transfer and shall be at the price at which the Transferee expects to be able to make a Non-System Sale or Purchase using the transferred position. The Transferor is responsible for any transmission costs and ancillary costs incurred in delivering the Non-System Purchase position to a designated delivery point, and the Transferee shall have costs responsibility for any transmission and ancillary costs associated with transmission service from the delivery point.

⁷ See *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, order on reh'g, 65 FERC ¶ 61,081 (1993) (*Prior Notice*). See also *El Paso Electric Co.*, 105 FERC ¶ 61,131 (2003) (affirming the Commission's policy in *Prior Notice*).

⁸ Xcel amended its December 8, 2005 filing on March 8, 2006, in response to a deficiency letter issued by the Director, Division of Tariffs and Market Development-Central on February 6, 2006.

⁹ Section C4 of Service Schedule C under Xcel's JOA provides that the Non-System Market Net Revenue shall be allocated among the Operating Companies in proportion to the prior year's annual peak load of each Operating Company. The JOA defines Net Revenue as the sales revenue less purchased power costs, net option premium costs, broker fees, transmission charges, and ancillary services charges that were required to support a sale, and net any costs of or revenues from any associated financial hedges (e.g., financial transmission rights acquired from a Regional Transmission Organization).

5. Schedule I provides for the transfer of capacity and/or energy that one Operating Company (Transferor) may purchase from a third party (Seller) with the intention of reselling all or a portion of such capacity and/or energy to another Operating Company (Transferee). These transfers may occur where the Transferee cannot make a System Purchase directly from a seller because it is not contractually enabled with the Seller, but where Transferor is so enabled, or where it would be more advantageous for Transferor to purchase through a single purchase a block of capacity and/or energy intended to be used by both Transferor and Transferee than for Transferor and Transferee to make separate purchases. Schedule I also provides that the transfer price shall be the cost that the Transferor incurs in purchasing the capacity and/or energy from Seller, including the purchase price and any associate transmission and ancillary service costs, that it is providing to Transferor under Schedule I.¹⁰ The Transferee is responsible for reimbursing the Transferor for its incurred cost.

6. XES requests an effective date of January 1, 2001, for Service Schedule H, to assure that it will apply to any applicable transactions that Xcel may have made in the past. XES also requests that it be relieved of any obligation to restate its books by repricing past transactions, since doing so would cause a tremendous administrative burden. Further, XES requests an effective date of April 1, 2005, for Service Schedule I, so that it will apply retroactively to sales made this past spring and summer. XES states that retroactive effectiveness will be in the public interest because it will result in lower transfer pricing than currently provided for in its JOA.

III. Notice of Filing, Interventions and Protests

7. Notice of filing was published in *Federal Register*, 70 Fed. Reg. 76,803 (2005), with comments, protests and interventions due by or before December 29, 2005. Golden Spread filed a timely motion to intervene, protest and request for summary rejection; and Occidental filed a timely motion to intervene and protest. Public Service Company of Wisconsin and Holy Cross Energy filed timely motions to intervene. XES filed an answer to Golden Spread's and Occidental's protests.

8. Notice of XES' February 18 filing was published in *Federal Register*, 71 Fed. Reg. 14,195 (2006), with response to a deficiency letter due by or before March 8, 2006. XES filed a timely response. Golden Spread and Occidental filed timely protests to XES' response.

¹⁰ Both Service Schedules H and I exclude fixed costs associated with Firm Transmission Entitlements arranged and paid for under Service Schedule D.

A. Intervenors's Comments

9. Intervenors take issue with XES' requested effective dates. Occidental requests that the Commission reject XES' requested effective dates and hold a hearing to determine whether the past transactions require the imposition of refunds or other remedies.
10. Golden Spread states several reasons to reject XES' filing: First, it is clearly a proposed rate change under section 205 of FPA and XES' filing does not comply with the Commission's regulations. Second, if it is a rate change, other than a rate increase, at a bare minimum XES is obligated to comply with *de minimus* requirements regarding information relating to an effective rate schedule change by providing details of the past inter-affiliates transactions. Third, the lack of information is made more problematic with the request for effective dates five years in the past. XES explanation that it believed they had authority for such transactions under its JOA is not sufficient to justify such a request. Fourth, Golden Spread states that XES and certain affiliates right to continue market-based rate authority is a matter set for hearing and pending before the Commission¹¹ which recognized the market dominance of the Xcel in certain markets. This could possibly allow XES and its affiliates to enhance their buying and selling power in ways now not permitted under its JOA and enhances transfers of market-based sale rates regardless of location.
11. Golden Spread further states that XES does not explain if one operating company does not have an enabling agreement with a third party, but the second operating company does, if and how, the credit and risk profile of one operating company could be adversely affected if transactions were made primarily for the benefit of another operating company.
12. Finally, Golden Spread argues that XES does not provide sufficient supporting data in this proceeding or provide justification of its proposed rate changes.¹²
13. Occidental states that XES has failed to show that the proposed service schedules are just and reasonable. Occidental states that under the proposed Service Schedule H, the price of the inter-affiliate transfer of an off-system position (purchase or sale) is a set price that a transferee expects to obtain when it transfers the position to a third party. Therefore, a different expected price could create a set value that could be advantageous to the operating companies and potentially detrimental to consumers.

¹¹ See Docket Nos. EL05-19-001 and ER05-168-002 (consolidated), Docket No. EL05-151-000, and Docket No. ER06-274-000.

¹² 18 C.F.R. § 35.5 (2005).

14. Occidental states that section H4 of Service Schedule H requires the transferor's payment of the cost of acquiring transmission and ancillary services to implement an inter-affiliate transaction. Here, it is not clear whether the transferor will be reimbursed under Service Schedule C, or if it will be a proper assignment for such costs.

15. Occidental agrees with the inclusion of the provision of section H2 of Service Schedule H which states that it may not be used to evade any restriction on market-based rate authority that may apply to any operating company. However, the provision should be modified, so that XES provides a detailed quarterly report of such transactions.

B. XES' Answer

16. XES states that its JOA already provides for the coordination by XES and its operating companies of non-system marketing activities which companies share in the revenues from such activity.¹³ Therefore, Service Schedule H is only to provide the operating companies flexibility to transfer positions to the operating company that could derive the highest market value, and does not affect the amount that any individual operating company ultimately receives for non-system, marketing activities since all revenues of such transactions are combined and shared under a formula set under Service Schedule C.

17. XES states that the Commission should permit service schedules to become effective retroactively because the transactions now covered under Service Schedule H were entered into with the understanding that such transactions were permitted under Service Schedule C, which generally provides for the coordination of non-system marketing activities. Further, the OMOI audit findings support XES' position that no harm resulted from the transactions.

IV. Discussion

A. Procedural Matters

18. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

¹³ See Service Schedule C, section C2 of the JOA.

19. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We are persuaded to accept XES answer because it provides additional information that assists us in our decision making process.

B. Discussion

20. Our preliminary analysis of XES' proposed Service Schedules H and I indicate that they have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the proposed Service Schedules H and I for filing, suspend them for a nominal period, make them effective the earlier of February 7, 2006, which is 61 days after the date of filing, or the date the Commission specifies in an order issued after the technical conference, subject to refund and subject to further orders that will follow the technical conference.

21. The Commission shares the concerns raised by intervenors concerning Service Schedules H and I. Among other things, it is not clear to this Commission why the transfer price proposed in Service Schedule H is different from the transfer price proposed in Service Schedule I. Section H2 of Service Schedule H provides that the purpose of these transfers is to enable Xcel to maximize revenues from Non-System Marketing to be allocated among Xcel in accordance with Service Schedule C. If this is the case, changing the transfer price proposed in Service Schedule H to that proposed in Service Schedule I would not affect the revenues generated from the third party seller, since the revenues would continue to be allocated among Xcel consistent with Service Schedule C under the JOA. It is also unclear why both service schedules are required.

22. At this point, we believe that proposed Service Schedules H and I would benefit from further exploration by the advisory Staff and the parties. Therefore, we will direct the Staff to convene a technical conference. Following the conference, the parties will have an opportunity to file written comments that will be included in the formal record of the proceeding, which, together with the record developed to date, will form the basis for further Commission action.

The Commission orders:

(A) XES' proposed Service Schedules H and I are hereby accepted for filing, suspended for a nominal period, effective the earlier of February 7, 2006, or the date the Commission specifies in an order issued after the technical conference, subject to refund and subject to further orders that will follow the technical conference, as discussed in the body of this order.

(B) The Commission staff is hereby directed to convene a technical conference to explore the issues raised by XES' proposed Service Schedules H and I in Docket Nos. ER06-301-000 and ER06-301-001, and to report the results of the conference to the Commission within 120 days of the date of the issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.